In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 95

CATHERINE LLEWELLYN VAN WART, BY ROY M. VAN WART, Natural Tutor, petitioner

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The respondent does not oppose the petition.

The question is whether attorneys' fees expended by a guardian in litigation on behalf of the ward's estate are deductible from gross income. The decision in the instant case is in conflict with the decision in *Commissioner* v. *Wurts-Dundas*, 54 F. (2d) 515 (C.C.A. 2d), where it was held that attorneys' fees expended by the guardian in securing income to which the ward was entitled constituted an expense in carrying on the business

of administering the ward's estate. In the instant case the Circuit Court of Appeals for the Fifth Circuit, in refusing to follow the *Wurts-Dundas* case, said (R. 35):

> In the matter of personal expenses, the income tax law makes no distinction between a minor and an adult taxpayer; it treats them both alike. They would be treated very differently under the rule announced by the Court in the Wurts-Dundas case, supra, and followed by the Board in this case. Under that rule, the cost of litigation could be deducted from the minor's personal expenses by incurring it at any time before he or she came of age, whereas, as we have seen, such cost could not be so deducted in the case of an adult taxpayer; or where there were two beneficiaries of taxable income, one a minor and the other an adult, the former would but the latter would not be entitled to deduct the same sort of personal expenses. To follow such a rule would be, as it seems to us, to recognize a difference in tax liability where none was intended or authorized by the income tax law.

The respondent believes that the decision of the Circuit Court of Appeals in the instant case is correct, and is supported in principle by *Commissioner* v. *Field*, 42 F. (2d) 820 (C.C.A. 2d). However, due to the conflict above pointed out, as well as because of the importance of the question, the re-

spondent does not oppose the issuance of the writ of certiorari.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.

JUNE 1934.

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